

In the United States Court of Federal Claims

No. 06-254 L

(Filed: October 16, 2007)

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)	
PAT H. HAYES)	
)	Motion to Dismiss for Lack of
Plaintiff,)	Jurisdiction; RCFC 12(b)(1);
)	Statute of Limitations
v.)	
)	
THE UNITED STATES,)	
)	
Defendant.)	
_____)	

Pat H. Hayes, Anadarko, OK, pro se.

E. Kenneth Stegeby, with whom was Ronald J. Tenpas, Acting Assistant Attorney General, Environment and Natural Resources Division, U.S. Department of Justice, Washington, DC, for defendant.

OPINION

HEWITT, Judge

I. Background

Pro se plaintiff Pat H. Hayes filed a complaint with this court March 30, 2006, amended June 16, 2006, alleging that the Acting Area Director for the Bureau of Indian Affairs (BIA), Muskogee Area Office, improperly stopped “direct pay to Leona James Hayes from all federal contracts regarding oil and gas royalties for [the purpose of paying] state and federal taxes,”¹ Plaintiff’s Amended Complaint (Compl.) 1, and “failed

¹Plaintiff submitted briefing in legible handwritten form in all capital lettering. When
(continued...)

to notify lessor in writing . . . of its actions,” *id.* at 6. Defendant moved to dismiss plaintiff’s complaint pursuant to Rules 12(b)(1) and 12(h)(3) of the Rules of the United States Court of Federal Claims (RCFC). Defendant’s Motion to Dismiss for Lack of Jurisdiction and Memorandum in Support Thereof (Def.’s Mot. or Defendant’s Motion) 1. Defendant argued: “(1) Plaintiff’s claims are time-barred, and the Court therefore lacks jurisdiction over the case; (2) Plaintiff’s claims are barred by the doctrine of laches; and (3) Plaintiff, who appears pro se, cannot represent the interests of the estate of Leona James Hayes in this litigation.” Def.’s Mot. 1 (emphasis omitted).

On October 30, 2006, this court issued an “Opinion and Order” addressing Defendant’s Motion. Hayes v. United States, 73 Fed. Cl. 724 (2006). Defendant argued, and plaintiff never disputed, that plaintiff’s claim accrued on March 9, 1999, when “the Acting Area Director for the BIA issued three Authorization of Payment letters by which BIA ordered the oil and gas companies to stop their monthly direct payments to Leona James Hayes.” Def.’s Mot. 3, 8; see Pl.’s Compl. passim; plaintiff’s Answer [to] Defendant’s Motion to Dismiss for Lack of Jurisdiction and Memorandum in Support Thereof passim. Plaintiff argued that his claim was not time-barred either because it constitutes a continuing claim or because his current claim relates back to the date plaintiff first filed a similar claim in this court.² Compl. 7-15. The court held that the continuing claim doctrine did not apply to plaintiff’s claim, Hayes, 73 Fed. Cl. at 729, and that “[b]ecause the outcome of plaintiff’s initial case was a dismissal without prejudice, the initial case is a nullity and the present claim cannot relate back to that dismissed case,” *id.* The court stated, however, that it was still “unclear about when plaintiff and/or plaintiff’s late mother received actual and/or constructive notice of the March 9, 1999 letters and/or their import.” *Id.* at 730.

To assist in resolving these issues, the court requested that the parties “simultaneously file supplemental briefs” addressing specific questions presented by the court. *Id.* at 731. Specifically, the parties were asked: “When and how did plaintiff receive notice of the March 9, 1999 letters? When and how did Mrs. Leona James Hayes receive notice of the March 9, 1999 letters?” and “If notice was received by Mrs. Hayes after March 9, 1999, what is the impact of the delay of notice upon the statute of

¹(...continued)
quoting from plaintiff’s briefing, the court will employ conventional capitalization.

²“Plaintiff filed a claim in this court on March 5, 2002 based on the March 9, 1999 letters. Def.’s Mot. Ex. B. The case was dismissed by Chief Judge Damich without prejudice on November 6, 2002.” Hayes v. United States, 73 Fed. Cl. 724, 728 (2006) (citing Hayes v. United States, no. 02-169L, Order of Nov. 6, 2005 (Fed. Cl. 2002)).

limitations?” Id. These supplemental briefs are now before the court:³ Defendant’s Supplemental Brief Pursuant to Order of October 30, 2006 (Def.’s Supp. Br. or Defendant’s Supplemental Brief); plaintiff’s Reply to Court[’]s Order For Supplemental Brief (filed May 31, 2007) (Pl.’s Supp. Br. or Plaintiff’s Supplemental Brief); Defendant’s Renewed Motion to Dismiss for Lack of Jurisdiction and Memorandum in Support Thereof (Def.’s Renewed Mot. or Defendant’s Renewed Motion); [Plaintiff’s Response to Defendant’s Renewed Motion to Dismiss for Lack of Jurisdiction] (Pl.’s Resp. or Plaintiff’s Response); Defendant’s Reply in Support of Its Renewed Motion to Dismiss for Lack of Jurisdiction (Def.’s Reply or Defendant’s Reply); [Plaintiff’s Motion for Reconsideration] (Pl.’s Mot. or Plaintiff’s Motion); Defendant’s Opposition to [Plaintiff’s Motion for Reconsideration] (Def.’s Opp’n. or Defendant’s Opposition); and Plaintiff’s Reply to Defendant’s Opposition to [Plaintiff’s Motion for Reconsideration] (Pl.’s Reply or Plaintiff’s Reply).

Defendant moves to dismiss plaintiff’s complaint for lack of subject matter jurisdiction pursuant to Rules 12(b)(1) and 12(h)(3) of the RCFC Def.’s Renewed Mot. 2. Defendant argues:

Plaintiff and Mrs. [Leona James] Hayes[, plaintiff’s mother,] have admitted in a letter to the BIA that they were notified by Chesapeake Oil Company (“Chesapeake”) on April 23, 1999 that the direct payments to Mrs. Hayes were terminated; and . . . since Plaintiff and Mrs. Hayes received actual notice of the revocation letters on April 23, 1999, his alleged claims accrued no later than that day, and Plaintiff’s Complaint, which was filed on March 30, 2006, was untimely.

Def.’s Renewed Mot. 2-3.

Plaintiff filed a Motion for Reconsideration on June 29, 2007. Pl.’s Mot. Among other things, plaintiff moves for reconsideration of the issue of whether his claim constitutes a continuing claim. Pl.’s Mot. 16. Plaintiff also argues: “The fact that Acting Area Director Randall R. Trickey revoked direct pay of royalties without jurisdiction

³The court, in an effort to provide order and clarity to the briefing, set up a schedule that separated plaintiff’s concerns with the court’s Opinion and Order of October 30, 2006, from Defendant’s Renewed Motion to Dismiss for Lack of Jurisdiction and Memorandum in Support Thereof (Def.’s Renewed Mot. or Defendant’s Renewed Motion). Order of May 23, 2007, No. 06-254. In an Order dated June 29, 2007, the court deemed Plaintiff[’s] Answer to Court’s Opinion and Order Filed on October 30, 2006 with Supplemental Brief to be its Motion for Reconsideration as discussed in the court’s Order of May 23, 2007.

could be fraud[ulent] concealment of cause of action on March 9, 1999 and [the] statute of limitations cannot run.” Pl.’s Mot. 8 (citing 54 C.J.S. Limitations of Actions § 205).

After reviewing the parties’ supplemental briefs, it is clear that plaintiff filed his complaint in this court more than six years after receiving notice of his potential claim. Plaintiff’s claim is barred by the statute of limitations. Because the question of jurisdiction is a threshold issue, Steel Co. v. Citizens for a Better Env’t, 523 U.S. 83, 94-95 (1998), plaintiff’s disagreements with the court’s Opinion and Order of October 30, 2006 are rendered irrelevant.⁴ Defendant’s Motion is therefore GRANTED.

II. Legal Standards

The question of subject matter jurisdiction is a threshold issue that must be determined at the outset of a case. Steel Co., 523 U.S. at 94-95; Pods, Inc. v. Porta Stor, Inc., 484 F.3d 1359, 1365 (Fed. Cir. 2007). “If the court finds that it lacks jurisdiction over the subject matter, it must dismiss the claim.” Matthews v. United States, 72 Fed. Cl. 274, 278 (2006); see RCFC 12(h)(3).

The jurisdiction of the United States Court of Federal Claims is set forth in the Tucker Act, 28 U.S.C. § 1491 (2006). This court “shall have jurisdiction to render judgment upon any claim against the United States founded either upon the Constitution, or any Act of Congress or any regulation of an executive department, or upon any express or implied contract with the United States, or for liquidated or unliquidated damages in cases not sounding in tort.” 28 U.S.C. § 1491(a)(1). The statute of limitations for the Court of Federal Claims is set forth in section 2501 of title 28 of the United States Code. 28 U.S.C. § 2501 (2006). It states: “Every claim of which the United States Court of Federal Claims has jurisdiction shall be barred unless the petition thereon is filed within six years after such claim first accrues.” 28 U.S.C. § 2501. “The 6-year statute of limitations on actions against the United States is a jurisdictional requirement attached by Congress as a condition of the government’s waiver of sovereign immunity and, as such, must be strictly construed.” Hopland Band of Pomo Indians v. United States, 855 F.2d 1573, 1576-77 (Fed. Cir. 1988); see John R. Sand & Gravel Co. v. United States, 457 F.3d 1345, 1354-55 (Fed. Cir. 2006), cert. granted in part, 127 S. Ct. 2877 (2007).

⁴Plaintiff’s own briefing seeking reconsideration supports the conclusion that the court was correct in holding that the continuing claim doctrine does not apply to plaintiff’s claim. Plaintiff admits in his Motion for Reconsideration that “the entire case was based on defendant’s revocation of direct payment of royalties to plaintiff on March 9, 1999.” Plaintiff’s Motion for Reconsideration (Pl.’s Mot. or Plaintiff’s Motion) 14-15.

“A claim accrues when all events have occurred that fix the alleged liability of the Government and entitle the plaintiff to institute an action.” Creppel v. United States, 41 F.3d 627, 631 (Fed. Cir. 1994) (citing Japanese War Notes Claimants Ass’n of the Phil., Inc. v. United States, 373 F.2d 356, 358 (Ct. Cl. 1967) (Japanese War Claimants)). To suspend the running of the statute of limitations “[p]laintiff must either show that defendant has concealed its acts with the result that plaintiff was unaware of their existence or it must show that its injury was ‘inherently unknowable’ at the accrual date.” Japanese War Claimants, 373 F.2d at 359 (footnote omitted). “Once plaintiff is on inquiry [notice] that [he] has a potential claim, the statute can start to run.” Id.

When jurisdictional facts are challenged, the court “may consider relevant evidence in order to resolve the factual dispute.” Reynolds v. Army & Air Force Exch. Serv., 846 F.2d 746, 747 (Fed. Cir. 1988) (citing Land v. Dollar, 330 U.S. 731, 735 (1947); Zunamon v. Brown, 418 F.2d 883, 886 (8th Cir. 1969)). Plaintiff “bears the burden of establishing subject matter jurisdiction by a preponderance of the evidence. Id. at 748 (citations omitted).

III. Discussion

Plaintiff argues that defendant may have fraudulently concealed his cause of action, thus suspending the statute of limitations. Pl.’s Mot. 8. However, although plaintiff alleges fraudulent concealment, plaintiff goes on to say that he “cannot say fraud was involved.” Pl.’s Mot. 8. Plaintiff cites to section 205 of volume 54 of Corpus Juris Secundum Limitations of Actions as support for his argument that the statute of limitations cannot run. Pl.’s Mot. 8. That section is entitled “Continuing injury from structures; nuisance” and is inapplicable to this case. See 54 C.J.S. Limitations of Actions § 205.

Regardless of whether there was any fraudulent concealment of the cause of action, plaintiff was on notice of his potential claim on April 23, 1999. According to defendant, plaintiff and Mrs. Hayes sent a letter to Acting Area Director Jim Fields of the BIA Muskogee Area Office on May 5, 1999, in which they acknowledged “that they had been notified by Chesapeake Oil Company (“Chesapeake”) on April 23, 1999 that direct payments had been terminated.” Def.’s Supp. Br. 3. This letter is attached to

Defendant's Renewed Motion as Exhibit B.⁵ See Def.'s Renewed Mot. Ex. B. The letter, signed by Leona James Hayes and Pat. H. Hayes, states:

On April 23, 1999, we were notified by Chesapeake Oil Company that direct pay rights to Leona James Hayes was withdrawn by 'Acting' Area Director Mr. Randall R. Trickey concerning all oil and gas leases under the jurisdiction of the Bureau of Indian Affairs concerning Leona James Hayes, Chickasaw M-240. Since Mr. Randall R. Trickey signed off as 'Acting' Area Director, we would like to know if his decision was final as well as yours?

Def.'s Renewed Mot. Ex. B. The BIA responded on May 24, 1999. Def.'s Supp. Br. 3; Def.'s Renewed Mot. Ex. C. According to a letter, dated February 21, 2002, sent from plaintiff to the BIA, care of Mr. Traile Glory, the BIA response, "dated May 24, 1999, . . . confirmed that Acting Area Director Randall R. Trickey had the authority to revoke direct pay to Leona James now Hayes." Def.'s Renewed Mot. Ex. C. Therefore, according to these letters, plaintiff was aware of the decision of the BIA no later than April 23, 1999. This notice was confirmed no later than May 24, 1999, the date the BIA responded to plaintiff's letter of May 5, 1999. Furthermore, in response to the court's question of when plaintiff and Mrs. Hayes received notice of the March 9, 1999 letters, plaintiff confirmed defendant's assertions and responded that "[a]fter careful review of records, we both received notice from Chesapeake in April of 1999 when they provided copies of the U.S. Government's action of March 9, 1999." Pl.'s Supp. Br. 3. Plaintiff has not met the requirement that he demonstrate by a preponderance of the evidence that the facts support jurisdiction. Moreover, plaintiff's own briefing contains admissions which are inconsistent with a finding of jurisdiction.

Plaintiff's alleged claims accrued no later than April 23, 1999, when plaintiff received notice of his potential claim. To satisfy the six-year limitations period set forth in 28 U.S.C. § 2501, plaintiff was required to have filed his claim no later than April 23, 2005. Because plaintiff filed his complaint in this court on March 30, 2006, he did not satisfy the statute of limitations and his claim is therefore barred.

⁵Plaintiff complains that defendant violated the Privacy Act of 1974, 5 U.S.C. § 552, by using exhibits A, B, and C without permission of plaintiff. Pl.'s Resp. 4-5. The merits of this allegation, which the court does not address, do not, in any event, affect this court's disposition of the accrual issue because the exhibits provide evidence that plaintiff was aware of the actions of the BIA. Furthermore, regardless of the exhibits provided by defendant, plaintiff admits to having received notice of the March 9, 1999 letters in April of 1999. See plaintiff's Reply to Court's Order For Supplemental Brief (Pl.'s Supp. Br. or Plaintiff's Supplemental Brief) 3.

Plaintiff's Motion for Reconsideration, as well as the additional questions presented in the court's Opinion and Order of October 30, 2006, and addressed in the parties' supplemental briefs, are now considered MOOT.

IV. Conclusion

For the foregoing reasons, defendant's motion to dismiss is GRANTED. The Clerk of the Court shall enter judgment dismissing plaintiff's complaint. No costs.

IT IS SO ORDERED.

EMILY C. HEWITT
Judge